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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,424	05/21/2001	Christoph Mecklenbrauker	12758-026001	7773
26161	7590	02/23/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			HABTE, ZEWDU	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/856,424	Applicant(s) MECKLENBRAUKER ET AL.	
	Examiner Zewdu Habte	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10, 15, 16 and 18 is/are allowed.
- 6) ☒ Claim(s) 11-13, 17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 14 and 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 11, 12, 13, 17, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, the phrase " the first type of data rate dynamics " renders the claim indefinite because there is no reference in claim 10 to a first type of data rate dynamics; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claims 11 and 13, the phrase " the second type of data rate dynamics " renders the claim indefinite because there is no reference in claim 10 to a second type of data rate dynamics; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claim 12, the phrase "the second channel" renders the claim indefinite because there is no reference in claim 10 to a second channel; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claim 17, the phrase "the common physical channel" renders the claim indefinite because there is no reference in claim 16 to a common physical channel; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claims 19 and 20, the phrase "the first type of data rate dynamics" renders the claim indefinite because there is no reference in claim 1 to a first type of

data rate dynamics; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claim 19, the phrase "the second type of data rate dynamics" renders the claim indefinite because there is no reference in claim 1 to a second type of data rate dynamics; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Regarding claim 20, the phrase "the second channel" renders the claim indefinite because there is no reference in claim 19 to a second channel; it lacks positive antecedent basis in the claim. See MPEP § 2173.05(e).

Allowable Subject Matter

Claims 14 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-10, 15, 16, and 18 allowed.

Claims 1, and 10 are allowable because the prior art of record fails to teach, in combination with other claim limitations,

- the services (S) are classified into at least two classes on the basis of service-specific data rate dynamics,
- for services (S) with high data rate dynamics, the transport format (TF) is signaled in-band, and for services (SF) with low data rate dynamics, the transport format (TF) is signaled in a separate channel (FACH),

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zewdu Habte whose telephone number is 571-272-


Art Unit: 2661

3115. The examiner can normally be reached on 8:30-5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571-272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zewdu Habte (Zed)
Examiner
Art Unit 2661

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KENNETH VANDERPUYE
PRIMARY EXAMINER